## UNITED STATES OF AMERICA

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

FJC SECURITY SERVICES, INC. Employer

and

Case 16-RC-10932

FEDERAL CONTRACT GUARDS OF AMERICA (FCGOA) Petitioner

and

UNITED GOVERNMENT AND SECURITY OFFICERS OF AMERICA (UGSOA) Intervenor

## DECISION AND DIRECTION OF SECOND ELECTION

On January 7, 2011, the National Labor Relations Board issued a Decision and Direction in this case, adopting the hearing officer's recommendation to overrule challenges to the ballots of eight voters and directing the Regional Director to open and count the ballots of those voters and prepare a revised tally. The January 18, 2011 revised tally of ballots shows 24 for the Petitioner, 18 for the Intervenor, and 1 against union representation.

The Board, by a three-Member panel, has considered objections to the election and has reviewed the record in light of the Intervenor's remaining exception and the briefs. In the exception, the Intervenor asserts that five additional eligible voters were omitted from the

-

<sup>&</sup>lt;sup>1</sup> The mail ballot election was held between May 12 and 26, 2010, pursuant to a Decision and Direction of Election

*Excelsior* list and therefore were disenfranchised from the mail-ballot election. In the unique circumstances of this case, we find merit to the exception.<sup>2</sup> Therefore, we find that neither the Petitioner nor the Intervenor has conclusively prevailed in the election, and that a second election is necessary.<sup>3</sup>

## DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they are ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the

<sup>&</sup>lt;sup>2</sup> The hearing officer found one of these employees, Hector De La Rosa, eligible to vote but found that the record was not clear as to whether the other four individuals, Gumercindo Perez, Hector Muniz, David Castaneda, and Margarito Garci, were employed on the date of the election. We find that the record establishes that they were employed on that date and that they were eligible to vote in the election.

<sup>&</sup>lt;sup>3</sup> After the revised tally showed that the Petitioner received more votes than the Intervenor, the Petitioner filed a request with the Board to withdraw its objections, which it had previously characterized as conditional on the final tally. Apparently believing that it had won the election, the Petitioner further requested that the Board issue a certification. However, we find that the revised tally is inconclusive because of the Employer's disenfranchisement of the five employees. Under these unusual circumstances, and in view of the involvement of two unions in this election, we deny the Petitioner's request and direct a second election. See *Cook Family Foods*, 317 NLRB 1137, 1137 fn.3 (1995).

Member Becker would grant the Petitioner's request to withdraw its objections and would certify the results of the election, including certifying the Petitioner as the representative of the employees. Therefore, he respectfully dissents.

strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by Federal Contract Guards of America, by United Government and Security Officers of America, or by neither.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C., April 22, 2011.

	Craig Becker,	Member	
	Mark Gaston Pearce,	Member	
	Brian E. Hayes,	Member	
(SEAL)	NATIONAL LABOR R	NATIONAL LABOR RELATIONS BOARD	

3